

IT 95-18
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION

CHICAGO, ILLINOIS)
DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
)
)
v.) No.
) SSN:
)
XXXXX,)
)
Taxpayer)
)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Taxpayer appeared pro se.

SYNOPSIS: This case involves the taxpayer's liability for Illinois Income Tax for the taxable year ended 12/31/89 and for penalties pursuant to 35 ILCS 5/1001 and 35 ILCS 5/1005.

FINDINGS OF FACT:

1. The Department of Revenue received information from the Internal Revenue Service indicating that the taxpayer had filed a federal income tax return for the 1989 year with an Illinois address, reflecting an adjusted gross income of \$18,743.

2. The Department of Revenue reported that there was no evidence of the taxpayer having filed a corresponding Illinois 1040 for the 1989 tax year, nor any evidence of payment thereon.

3. On June 26, 1992, the Department issued a Notice of Deficiency in the amount of \$488.00, together with penalties and interest provided by law in the amount of \$411.00 for a total proposed liability of \$899.00.

4. As part of his protest filed July 6, 1992, and as supplemented on

May 25, 1993, taxpayer produced a copy of his 1989 signed return, dated April 13, 1990, asserting his claim to it having been filed on a timely basis. Said return, in conformity with the Notice of Deficiency, showed a net tax due in the amount of \$488.00. Subtracting a total of \$349.91 for withholding as evidenced by copies of taxpayer's W-2 forms (TP Ex. #3), the total due for tax would have been \$138.09.

5. As part of the documents submitted for hearing, the taxpayer produced a copy of his completed check register for 1990, which showed a check dated April 13, 1990 in the amount of \$139.09 made out to the Illinois Department of Revenue. Said entry was in sequence with all other entries in the register.

6. At the time of the supplemental protest, taxpayer reluctantly executed and paid \$138.09 by way of personal check #3183, dated May 25, 1993, as a replacement to cover the tax. A DOR receipt for same, dated 6/7/93, accompanied taxpayer's documents. XXXXX, however, refused to pay any penalties or interest.

CONCLUSIONS OF LAW: Section 5/502 of the Illinois Income Tax Act (35 ILCS 5/502) requires all persons to file returns with respect to the taxes imposed by the Act. Sections 5/804, 5/1001 and 5/1005 (35 ILCS 5/804; 35 ILCS 5/1001; and 35 ILCS 5/1005) respectively impose penalties for failure to pay estimated taxes, failure to file returns and for underpayment of taxes due.

It is determined by this hearing that the taxpayer produced sufficient evidence to show or otherwise lead to the reasonable inference that his IL-1040 return for the 1989 tax year was in fact filed on or before the date due (i.e. April 13, 1990) and that the taxes shown to be due thereon were paid in full in accompaniment of that return. Under these circumstances, the inadvertent loss of the documents and payment by the Department should not act to penalize the taxpayer. Inasmuch as a replacement check was

executed to the Department, all requisite debt in this cause should be deemed satisfied.

It is therefore recommended that the Notice of Deficiency in this cause be withdrawn in its entirety.

Dennis L. Karns
Administrative Law Judge

10/24/94